

COUNTY OF SUFFOLK



STEVEN BELLONE
SUFFOLK COUNTY EXECUTIVE

DENNIS M. COHEN
COUNTY ATTORNEY

DEPARTMENT OF LAW

October 11, 2012

Hon. William D. Wall, U.S.M.J.
U.S. Federal Court
100 Federal Plaza
P.O. Box 9014
Central Islip, New York 11722-9014

Re: Philip Datz v. Michael Milton, et al.
Docket No. CV 12-1770 (LDW)(WDW)

Dear Magistrate Judge Wall:

The undersigned writes in response to plaintiff's application of October 9, 2012. The County would respectfully ask for the Court to deny plaintiff's application to amend this Court's October 4, 2012 Order.

While the undersigned is mindful of Eldagher v. City of New York Dept of Citywide Admin. Servs. 2003 Dist.LEXIS 19247 (S.D.N.Y. 2003) the County would rely on Julicher v. Town of Tonawanda, 2008 WL 4415226 (W.D.N.Y.) that supports the position that discovery rules are not absolute and that they leave room for the application of the court's discretion in deciding such matters.

In Julicher, *supra*, the court applied the holding in Eldagher, *supra* to the principles set forth in Davis v. City of New York, 1988 WL 42189 (S.D.N.Y. 1988) and held "however it is equally well settled that the protections and sanctions found in the discovery rules are not absolute and contemplate use of judicial discretion". In that case, the court permitted objections to specific interrogatories despite the answers being filed beyond the statutory time.

Hon. William D. Wall
Re: Datz v. Milton, et al.
October 11, 2012

Page -2-

In light of the holding in Julicher, *supra*, the County would ask the court to consider the circumstances of the delay where it is submitted was not deliberate or intended to be an obstruction of the discovery process, but was the result of recent staffing issues.

Very truly yours,

Dennis M. Cohen
Suffolk County Attorney



Richard T. Dunne
Assistant County Attorney

RTD:mar
cc via ECF: Robert D. Balin, Esq. (Davis Wright Tremaine LLP)